

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE MARCH 23, 2010

**SENATE BILL**

**No. 1402**

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**Introduced by Senator Dutton**

**(Coauthors: Senators Calderon, Cogdill, Correa, Cox, Denham,  
Hollingsworth, Huff, and Wright)**

**(Coauthor: Assembly Member Smyth)**

February 19, 2010

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An act to amend ~~Sections 43008.6, 43016, 43020, 43023, 43154, 43211, and 43212 of, to amend and renumber Section 43031 of, to add Sections 39619.7, 42413, and 43024.5 to, and to repeal Section 43031.5 of Section 43023 of, and to add Sections 39619.7 and 43024 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Dutton. State Air Resources Board: administrative and civil penalties.

(1) Existing law subjects violators of air pollution laws to specified civil and administrative penalties. Existing law imposes various duties on the State Air Resources Board relative to the reduction of air pollution.

This bill would require a communication, whether written or oral, from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information. The bill would require this information and final mutual settlement agreements reached between the state board

and a person alleged to have violated air pollution laws to be made available to the public.

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state board to ~~adopt and submit to the Legislature a written~~ *publish a* penalty policy for motor vehicle pollution laws that is based on specified criteria.

~~This bill would entitle a person alleged to have violated motor vehicle pollution laws to the right to an administrative hearing pursuant to existing provisions of law, at the person's request, in lieu of a civil action. It would increase the maximum amount of an administrative penalty imposed pursuant to specified provisions of law per penalty assessment proceeding for any violation arising from the same conduct from \$100,000 to \$300,000, and would require specified administrative and civil penalties, including proceeds of mutual settlement agreements, to be deposited in the General Fund.~~

~~The bill would provide that a person would not be liable under more than one civil, administrative, or criminal penalty provision of motor vehicle pollution law for any violation arising from the same conduct, and would prohibit the state board from assessing penalties against multiple persons for the production or sale of the same vehicle or units under motor vehicle pollution law provisions.~~

~~This bill, in addition, would provide that any person who fails to obtain a new certification for an engine family certified in the previous model year and sold in the same configuration in the model year for which the failure to obtain new certification was made would be liable for a civil penalty not to exceed \$10,000 per engine family for which the person failed to obtain certification, rather than per vehicle. The bill would subject specified violations for transactions involving uncertified vehicles to a cumulative civil penalty not to exceed \$5,000 per vehicle, regardless of the number of violations or violators with respect to that vehicle.~~

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 39619.7 is added to the Health and Safety  
2 Code, to read:

3     39619.7. (a) A communication, whether written or oral, from  
4 the state board alleging that an administrative or civil penalty will  
5 be, or could be, imposed either by the state board or another party,  
6 including the Attorney General, for a violation of air pollution law,  
7 shall contain a clear explanation of ~~both~~ *all* of the following:

8     (1) The manner in which the administrative or civil penalty  
9 amount was determined, including the aggravating and mitigating  
10 factors the state board considered in arriving at the amount, and,  
11 where applicable, the per unit or per vehicle basis for the penalty.

12     (2) Whether there were direct pollution emissions in excess of  
13 legal requirements resulting from the violation, and if there were,  
14 a quantification of the specific amount of pollution emitted in  
15 excess of the requirements.

16     (3) The provision of law or regulations under which the alleged  
17 violator is being assessed the administrative or civil penalty,  
18 including the reason that provision is most appropriate for that  
19 violation.

20     (b) The information described in subdivision (a) and all final  
21 mutual settlement agreements reached between the state board and  
22 a person alleged to have violated air pollution laws shall be made  
23 available to the public.

24     ~~SEC. 2. Section 42413 is added to the Health and Safety Code,~~  
25 ~~to read:~~

26     ~~42413. All penalties collected by the state board pursuant to~~  
27 ~~Part 1 (commencing with Section 39000) to Part 4 (commencing~~  
28 ~~with Section 41500), inclusive, including proceeds from mutual~~  
29 ~~settlement agreements, shall be deposited in the General Fund.~~

30     ~~SEC. 3. Section 43008.6 of the Health and Safety Code is~~  
31 ~~amended to read:~~

32     ~~43008.6. (a) Notwithstanding Section 43012, for the purpose~~  
33 ~~of enforcing or administering Section 27156 of the Vehicle Code,~~  
34 ~~the executive officer of the state board or an authorized~~  
35 ~~representative of the executive officer, upon presentation of~~  
36 ~~credentials or, if necessary under the circumstances, after obtaining~~  
37 ~~a warrant pursuant to Title 13 (commencing with Section 1822.50)~~  
38 ~~of Part 3 of the Code of Civil Procedure, has the right of entry to~~

1 any premises owned, operated, used, leased, or rented by an owner  
2 or operator of any vehicle operated for commercial purposes in  
3 order to inspect any such motor vehicle, secure emission samples  
4 therefrom, or inspect and copy any maintenance, use, or other  
5 records pertaining to that vehicle.

6 (b) ~~The state board may collect a civil penalty not to exceed~~  
7 ~~one thousand five hundred dollars (\$1,500) for each violation of~~  
8 ~~Section 27156 of the Vehicle Code. Any penalties shall be paid to~~  
9 ~~the Treasurer for deposit in the General Fund.~~

10 (c) ~~The civil penalty specified in subdivision (b) may be~~  
11 ~~collected for one or more violations involving the tampering with~~  
12 ~~or disabling of a gasoline-powered vehicle's air injection, exhaust~~  
13 ~~gas recirculation, crankcase ventilation, fuel injection, carburetion,~~  
14 ~~ignition timing, or evaporative control system, fuel filler neck~~  
15 ~~restrictor, oxygen sensor or related electronic controls, or catalytic~~  
16 ~~converter, or for the use of leaded fuel in a vehicle certified for~~  
17 ~~the use of unleaded fuel only.~~

18 (d) ~~The civil penalty specified in subdivision (b) may not be~~  
19 ~~collected for a violation that is related to any tampering or disabling~~  
20 ~~of a gasoline-powered vehicle specified in subdivision (c) by a~~  
21 ~~rental customer of that vehicle, including, but not limited to, a~~  
22 ~~missing gasoline filler cap and a disconnected or missing heated~~  
23 ~~air intake tube or vacuum hose. However, if more than 20 percent~~  
24 ~~of an owner's or operator's gasoline-powered vehicles are found~~  
25 ~~to be nonconforming during each of three consecutive inspections~~  
26 ~~conducted 30 or more days apart during any one-year period, the~~  
27 ~~civil penalty specified in subdivision (b) applies and shall be~~  
28 ~~collected for each time a vehicle is found in a nonconforming~~  
29 ~~condition.~~

30 SEC. 4. ~~Section 43016 of the Health and Safety Code is~~  
31 ~~amended to read:~~

32 43016. ~~Any person who violates any provision of this part, or~~  
33 ~~any order, rule, or regulation of the state board adopted pursuant~~  
34 ~~to this part, and for which violation there is not provided in this~~  
35 ~~part any other specific civil penalty or fine, shall be subject to a~~  
36 ~~civil penalty not to exceed five hundred dollars (\$500) per vehicle,~~  
37 ~~portable fuel container, spout, engine, or other unit subject to~~  
38 ~~regulation under this part, as these terms are defined in this division~~  
39 ~~or state board regulations.~~

1     ~~SEC. 5. Section 43020 of the Health and Safety Code is~~  
2     ~~amended to read:~~

3     ~~43020. (a) Any person who knowingly violates any regulation~~  
4     ~~adopted pursuant to this part by the state board pertaining to motor~~  
5     ~~vehicle fuels is guilty of a misdemeanor and is subject to a fine of~~  
6     ~~not more than one thousand dollars (\$1,000) or imprisonment in~~  
7     ~~the county jail for not more than six months, or both, for each~~  
8     ~~violation.~~

9     ~~(b) The recovery of civil penalties pursuant to this part precludes~~  
10    ~~prosecution pursuant to this section for the same offense. When~~  
11    ~~the executive officer refers a violation to a prosecuting attorney,~~  
12    ~~the filing of a criminal complaint is grounds requiring the dismissal~~  
13    ~~of any civil action brought pursuant to this part for the same~~  
14    ~~offense.~~

15    ~~SEC. 6. Section 43023 of the Health and Safety Code is~~  
16    ~~amended to read:~~

17    ~~43023. (a) (1) As an alternative to seeking civil penalties~~  
18    ~~under Chapter 1 (commencing with Section 43000) to Chapter 4~~  
19    ~~(commencing with Section 43800), inclusive, and Chapter 6~~  
20    ~~(commencing with Section 44200), for violation of state board~~  
21    ~~regulations, the state board may impose an administrative penalty,~~  
22    ~~as specified in this section, for a violation of this part, or any rule,~~  
23    ~~regulation, permit, variance, or order of the state board pertaining~~  
24    ~~to vehicular air pollution control except as otherwise provided in~~  
25    ~~this division. No administrative penalty imposed pursuant to this~~  
26    ~~section shall exceed the amount that the state board is authorized~~  
27    ~~to seek as a civil penalty for the applicable violation, and no~~  
28    ~~administrative penalty imposed pursuant to this section shall exceed~~  
29    ~~ten thousand dollars (\$10,000) for each day in which there is a~~  
30    ~~violation up to a maximum of three hundred thousand dollars~~  
31    ~~(\$300,000) per penalty assessment proceeding for any violation~~  
32    ~~arising from the same conduct. This three hundred thousand dollar~~  
33    ~~(\$300,000) maximum penalty limitation does not apply in any~~  
34    ~~judicial proceeding involving violations committed under this part.~~

35    ~~(2) A person alleged to have violated this part is entitled to an~~  
36    ~~administrative hearing pursuant to this section, at the person's~~  
37    ~~request, in lieu of a civil action.~~

38    ~~(b) Nothing in this section restricts the authority of the state~~  
39    ~~board to negotiate mutual settlements under any other penalty~~  
40    ~~provision of law that exceeds ten thousand dollars (\$10,000) for~~

1 each day in which there is a violation up to a maximum of three  
2 hundred thousand dollars (\$300,000) per penalty assessment  
3 proceeding.

4 (e) The administrative penalties authorized by this section shall  
5 be imposed and recovered by the state board in administrative  
6 hearings established pursuant to Article 3 (commencing with  
7 Section 60065.1) and Article 4 (commencing with Section 60075.1)  
8 of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the  
9 California Code of Regulations, except that the hearings shall be  
10 conducted by an administrative law judge appointed by the Office  
11 of Administrative Hearings from the General Jurisdiction Division.

12 (d) Nothing in this section authorizes the state board to impose  
13 penalties for categories of violations for which the state board may  
14 not seek penalties in a civil action.

15 (e) If the state board imposes any administrative penalties  
16 pursuant to this section, the state board may not bring any action  
17 pursuant to, or rely upon, Chapter 4 (commencing with Section  
18 17000) of Part 2 of Division 7 of the Business and Professions  
19 Code.

20 (f) After an order imposing an administrative penalty becomes  
21 final pursuant to the hearing procedures identified in subdivision  
22 (e), and no petition for a writ of mandate has been filed within the  
23 time allotted for seeking judicial review of the order, the state  
24 board may apply to the Superior Court for the County of  
25 Sacramento for a judgment in the amount of the administrative  
26 penalty. The application, which shall include a certified copy of  
27 the final order of the administrative hearing officer, shall constitute  
28 a sufficient showing to warrant the issuance of the judgment.

29 (g) This section does not apply to any violation for which a  
30 penalty may be assessed pursuant to Chapter 1.5 (commencing  
31 with Section 43025), except that a person alleged to have violated  
32 Chapter 1.5 (commencing with Section 43025) is entitled to an  
33 administrative hearing, in lieu of a civil action.

34 (h) This section is not intended, and shall not be construed, to  
35 grant the state board authority to assess an administrative penalty  
36 for any category of violation that was not subject to enforcement  
37 by the state board as of January 1, 2002.

38 (i) Any administrative penalty assessed pursuant to this section  
39 shall be paid to the Treasurer for deposit in the General Fund.

1     ~~(j) A party adversely affected by the final decision in the~~  
2     ~~administrative hearing may seek independent judicial review by~~  
3     ~~filing a petition for a writ of mandate in accordance with Section~~  
4     ~~1094.5 of the Code of Civil Procedure.~~

5     ~~(k) This section applies only to violations that occur on or after~~  
6     ~~January 1, 2002.~~

7     ~~(l) The state board shall prepare and submit to the Legislature~~  
8     ~~and the Governor a report summarizing the administrative penalties~~  
9     ~~imposed by the state board pursuant to this section for calendar~~  
10    ~~year 2011, and annually thereafter.~~

11    ~~SEC. 7. Section 43024.5 is added to the Health and Safety~~  
12    ~~Code, to read:~~

13    ~~43024.5. (a) A person shall not be liable under more than one~~  
14    ~~civil, administrative, or criminal penalty provision of Chapter 1~~  
15    ~~(commencing with Section 43000) to Chapter 4 (commencing with~~  
16    ~~Section 43800), inclusive, and Chapter 6 (commencing with~~  
17    ~~Section 44200) for any violation arising from the same conduct.~~

18    ~~(b) The state board shall not assess penalties against multiple~~  
19    ~~persons for the production or sale of the same vehicle or units~~  
20    ~~under the provisions of law described in subdivision (a). The state~~  
21    ~~board shall impose penalties only on the person the state board~~  
22    ~~determines to be most responsible for the violation.~~

23    ~~SEC. 8. Section 43031 of the Health and Safety Code is~~  
24    ~~amended and renumbered to read:~~

25    ~~43024. (a) The civil or administrative civil penalties prescribed~~  
26    ~~under Chapter 1 (commencing with Section 43000) to Chapter 4~~  
27    ~~(commencing with Section 43800), inclusive, and Chapter 6~~  
28    ~~(commencing with Section 44200) shall be assessed and recovered~~  
29    ~~either in a civil action brought in the name of the people of the~~  
30    ~~State of California by the Attorney General or by the state board,~~  
31    ~~or in administrative hearings established pursuant to regulations~~  
32    ~~adopted by the state board.~~

33    ~~(b) In determining the amount assessed, the court, the Attorney~~  
34    ~~General, or the state board, in reaching any settlement, shall act~~  
35    ~~pursuant to the official written policy described in subdivision (c)~~  
36    ~~that takes into consideration all relevant circumstances, including,~~  
37    ~~but not limited to, all of the following:~~

38    ~~(1) The extent of harm to public health, safety, and welfare~~  
39    ~~caused by the violation.~~

1     ~~(2) The nature and persistence of the violation, including the~~  
2     ~~magnitude of the excess emissions.~~

3     ~~(3) The compliance history of the defendant, including the~~  
4     ~~frequency of past violations.~~

5     ~~(4) The preventive efforts taken by the defendant, including the~~  
6     ~~record of maintenance and any program to ensure compliance.~~

7     ~~(5) The innovative nature and the magnitude of the effort~~  
8     ~~required to comply, and the accuracy, reproducibility, and~~  
9     ~~repeatability of the available test methods.~~

10    ~~(6) The efforts to attain, or provide for, compliance.~~

11    ~~(7) The cooperation of the defendant during the course of the~~  
12    ~~investigation and any action taken by the defendant, including the~~  
13    ~~nature, extent, and time of response of any action taken to mitigate~~  
14    ~~the violation.~~

15    ~~(8) For a person who owns a single retail service station, the~~  
16    ~~size of the business, for violations under Chapter 1.5 (commencing~~  
17    ~~with Section 43025).~~

18    ~~(e) No later than March 1, 2011, the state board shall adopt and~~  
19    ~~submit to the Legislature a written penalty policy that is based on~~  
20    ~~the criteria in subdivision (b) and that is modeled on the United~~  
21    ~~States Environmental Protection Agency's 2009 Clean Air Act~~  
22    ~~Mobile Source Civil Penalty Policy for Vehicle and Engine~~  
23    ~~Certification Requirements.~~

24    ~~(d) All administrative and civil penalties collected under Chapter~~  
25    ~~1 (commencing with Section 43000) to Chapter 4 (commencing~~  
26    ~~with Section 43800), inclusive, and Chapter 6 (commencing with~~  
27    ~~Section 44200), including proceeds from mutual settlement~~  
28    ~~agreements, shall be deposited in the General Fund.~~

29    ~~SEC. 9. Section 43031.5 of the Health and Safety Code is~~  
30    ~~repealed.~~

31    ~~SEC. 10. Section 43154 of the Health and Safety Code is~~  
32    ~~amended to read:~~

33    ~~43154. (a) (1) Except as otherwise provided in paragraph (2),~~  
34    ~~violations of this article and Section 43211 are subject to a~~  
35    ~~cumulative civil penalty not to exceed five thousand dollars~~  
36    ~~(\$5,000) per vehicle, regardless of the number of violations or~~  
37    ~~violators with respect to that vehicle.~~

38    ~~(2) Any person who fails to obtain a new certification for an~~  
39    ~~engine family certified in the previous model year and sold in the~~  
40    ~~same configuration in the model year for which the failure to obtain~~



~~new certification was made shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per engine family for which the person failed to obtain certification, rather than per vehicle.~~

~~(b) Any action to recover a penalty under this section shall be brought in the name of the people of the State of California in the superior court of the county where the violation occurred, or in the county where the defendant's residence or principal place of business is located, by the Attorney General on behalf of the state board, in which event all penalties adjudged by the court shall be deposited in the General Fund, or by the district attorney or county attorney of such county, or by the city attorney of a city in that county, in which event all penalties adjudged by the court shall be deposited with the treasurer of the county or city, as the case may be.~~

~~SEC. 11. Section 43211 of the Health and Safety Code is amended to read:~~

~~43211. A new motor vehicle shall not be sold in California that does not meet the emission standards adopted by the state board, and any manufacturer who sells, attempts to sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable emission standards shall be subject to a cumulative civil penalty of five thousand dollars (\$5,000) per vehicle, regardless of the number of violations or violators with respect to that vehicle.~~

~~Any penalty recovered pursuant to this section shall be deposited into the General Fund.~~

~~SEC. 12. Section 43212 of the Health and Safety Code is amended to read:~~

~~43212. Any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty of fifty dollars (\$50) for each vehicle which does not comply with the standards or procedures and which is first sold in this state. The payment of those penalties to the state board shall be a condition to the further sale by that manufacturer or distributor of motor vehicles in this state.~~

~~SEC. 2. Section 43023 of the Health and Safety Code is amended to read:~~

~~43023. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4~~

(commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. No administrative penalty imposed pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding for any violation arising from the same conduct. This one hundred thousand dollar (\$100,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into

1 consideration all relevant circumstances, including, but not limited  
2 to, those factors specified in subdivision (b) of Section 43031.

3 (g) After an order imposing an administrative penalty becomes  
4 final pursuant to the hearing procedures identified in subdivision  
5 (c), and no petition for a writ of mandate has been filed within the  
6 time allotted for seeking judicial review of the order, the state  
7 board may apply to the Superior Court for the County of  
8 Sacramento for a judgment in the amount of the administrative  
9 penalty. The application, which shall include a certified copy of  
10 the final order of the administrative hearing officer, shall constitute  
11 a sufficient showing to warrant the issuance of the judgment.

12 (h) This section does not apply to any violation for which a  
13 penalty may be assessed pursuant to Chapter 1.5 (commencing  
14 with Section 43025).

15 (i) This section is not intended, and shall not be construed, to  
16 grant the state board authority to assess an administrative penalty  
17 for any category of violation that was not subject to enforcement  
18 by the state board as of January 1, 2002.

19 (j) Any administrative penalty assessed pursuant to this section  
20 shall be paid to the State Treasurer for deposit in the General Fund.

21 (k) A party adversely affected by the final decision in the  
22 administrative hearing may seek independent judicial review by  
23 filing a petition for a writ of mandate in accordance with Section  
24 1094.5 of the Code of Civil Procedure.

25 (l) This section applies only to violations that occur on or after  
26 January 1, 2002.

27 (m) ~~On or before January 1, 2005, the~~ The state board shall  
28 prepare and submit to the Legislature and the Governor a report  
29 summarizing the administrative penalties imposed by the state  
30 board pursuant to this section for calendar years 2002, 2003, 2004,  
31 ~~and 2005~~ year 2011, and annually thereafter.

32 SEC. 3. Section 43024 is added to the Health and Safety Code,  
33 to read:

34 43024. (a) No later than March 1, 2011, the state board shall  
35 publish a penalty policy for civil or administrative penalties  
36 prescribed under Chapter 1 (commencing with Section 43000) to  
37 Chapter 4 (commencing with Section 43800), inclusive, and  
38 Chapter 6 (commencing with Section 44200).

39 (b) The policy shall take into consideration all relevant  
40 circumstances, including, but not limited to, all of the following:

1     (1) *The extent of harm to public health, safety, and welfare*  
2     *caused by the violation.*

3     (2) *The nature and persistence of the violation, including the*  
4     *magnitude of the excess emissions.*

5     (3) *The compliance history of the defendant, including the*  
6     *frequency of past violations.*

7     (4) *The preventive efforts taken by the defendant, including the*  
8     *record of maintenance and any program to ensure compliance.*

9     (5) *The innovative nature and the magnitude of the effort*  
10    *required to comply, and the accuracy, reproducibility, and*  
11    *repeatability of the available test methods.*

12    (6) *The efforts of the defendant to attain, or provide for,*  
13    *compliance.*

14    (7) *The cooperation of the defendant during the course of the*  
15    *investigation and any action taken by the defendant, including the*  
16    *nature, extent, and time of response of any action taken to mitigate*  
17    *the violation.*

18    (8) *The financial burden to the defendant.*

19    ~~SEC. 13.~~

20    SEC. 4. This act is an urgency statute necessary for the  
21    immediate preservation of the public peace, health, or safety within  
22    the meaning of Article IV of the Constitution and shall go into  
23    immediate effect. The facts constituting the necessity are:

24    In order that air pollution penalties are imposed in furtherance  
25    of state goals as quickly as possible, it is necessary that this act  
26    take effect immediately.